**** VERSION SHOWING CHANGES MADE ****

1.　(Currently Amended) An apparatus for facilitating the selection and acquisition of digital images, comprising:

a storage device; and

a processor connected to the storage device, the storage device storing a program for controlling the processor; and

the processor operative with the program to:

receive search criteria regarding the subject matter of digital images from a user;

make one or more base digital images satisfying the search criteria available for the user to view;

receive input from the user to select a base digital image;

<u>retrieve and</u> display a plurality of derivative images corresponding to the base digital image selected by the user, <u>said derivative images pre-selected variations of the base digital image;</u> and

receive input from the user to elect one or more derivative images for acquisition by the user.

2.　(Currently Amended) The apparatus of claim 1 wherein the derivative images further comprise a plurality of pre-modified variations of the selected base digital image <u>which are pre associated with the selected base digital image.</u>

3.　(Original)　The apparatus of claim 1 wherein the derivative images have been created prior to the user's selection of the base digital image and are stored in the storage device.

4.   (Original)   The apparatus of claim 3 wherein the derivative images further comprise the selected base digital image.

5.   (Original)   The apparatus of claim 1, further comprising the processor operative with the program to make the elected derivative image available to the user to download.

6.   (Original)   The apparatus of claim 1, further comprising the processor operative with the program to:

receive payment information from the user; and

process the payment information to finalize the acquisition of the elected derivative image.

7.   (Original)   The apparatus of claim 1, further comprising the processor operative with the program to:

receive tool input from the user to select a special effects tool; and

allow the user to modify the elected derivative image using the selected special effects tool.

8.   (Currently Amended) A method for using a computer to facilitate the selection and acquisition of digital images, comprising:

inputting into the computer search criteria regarding the subject matter of digital images;

outputting one or more base digital images which satisfy the search criteria;

inputting into the computer a selection of one or more of the base digital images;

outputting a plurality of derivative images corresponding to the selected base digital image independent of conducting a query for said derivative images from a database;

inputting into the computer an election of one or more derivative images for acquisition by a user; and

outputting one or more elected derivative images for acquisition by the user.

9.   (Currently Amended) The method of claim 8 wherein the derivative images have been created prior to the selection of the base digital image, [and] are stored in a storage device of the computer, and are pre-associated with the base digital image.

10.   (Original)   The method of claim 9 wherein the derivative images further comprise the selected base digital image.

11.   (Original)   The method of claim 8, further comprising the steps of:

inputting into the computer a selection of a special effects tool; and

utilizing the special effects tool to modify the elected derivative image.

12.   (Original)   The method of claim 8 wherein the step of outputting one or more elected derivative images for acquisition by the user further comprises the steps of:

inputting into the computer payment information;

outputting payment authorization for the elected derivative image; and

outputting the elected derivative images to the user.

13.   (Currently Amended) The method of claim 8 wherein the step of outputting a plurality of derivative images corresponding to the selected base digital image further comprises the steps of:

retrieving the derivative images corresponding to the selected base digital image from a storage device of the computer; and

displaying the derivative images upon a video monitor of the computer.

14.   (Original)   The method of claim 8 wherein the step of outputting one or more base digital images which satisfy the search criteria further comprises the steps of:

searching a database of base digital images in the computer based on the search criteria;

displaying the base digital images which satisfy the search criteria upon a video monitor of the computer.

REMARKS

The Applicant has received the Office Action dated February 12, 2003, which

rejected all fourteen of the pending claims. The Office Action of August 21, 2003, stated

that the application had gone abandoned for failure to respond to the February 12, 2003,

Office Action.

Abandonment

The Patent Attorney making this response has provided the Applicant with the portion

of MPEP § 711.03(c) related to unintentional delay and the Applicant maintains that such

delay was unintentional. A petition and appropriate fee are enclosed herewith. Accordingly,

revival of this application would appear to be proper.

Accordingly, regarding the outstanding Office Action dated February 12, 2003, the

Applicant will address each of the rejections in the same order as provided by that Office

Action.

Claim Objections

Claim 13 is objected to for the informality of "corresponding the selected" should be -

- corresponding to the selected - -. The enclosed amendment addresses this informality.

Claim Rejections – 35 USC § 103

Claims 1-6, 8-10 and 12-14 are rejected as being obvious over De Bonet, U.S. Patent

No. 5,852,823 in view of Walker et al., U.S. Patent No. 5,794,207. The De Bonet reference

teaches a sophisticated method of searching by images. Specifically, if a first image is

selected, features of the images are interpreted by an algorithm and similar images are then

searched for from a database. As taught in that reference in column 8, lines 37-45, the first

image retrieved is performed in the traditional manner of "photo shop" image retrieval

1612722_1.DOC   6

application as described in the background of the disclosure in column 2, line 49-column 3, line 38. Upon selecting an image, a "mathematical assessment of visual similarity using a substantial number of different pre-defined visual characteristics of the query images, taken collectively, against each image" is taken and "image in the database that [are] most similar to the query images" [sic] are retrieved. Accordingly, De Bonet teaches the ability to search using characteristics of images.

In claim 1, as originally filed, the Applicant required that display of a plurality of derivative images corresponded to the base visual image selected by the user. The Applicant initially believed that this language is sufficiently clear to describe derivative works as described by the Copyright Act to 17 USC § 101: "a work based upon one or more pre-existing works . . .." Nevertheless, claim 1 has been amended to require that the additional language: "said derivative images pre-selected variations of the base digital image".

The Office Action cites De Bonet for the element of: "displaying a plurality of derivative images corresponding to base digital image selected by the user." (See column 7, lines 3-6, also, column 8, lines 37-45). Column 7, lines 3-6 are reproduced below.

> As a feature, the present invention allows a user to refine
> the retrieval process to locate images of increased
> relevance to the query images. Specifically, any retrieved
> image can be applied as an additional query image.

As one can see from this language, a retrieved image is utilized as a query image. A query image is one in which a search is then performed for. There are no "pre-selected" results of a query as if no elements are present, a query can come back with zero results. There is simply no "pre-selection" taught or suggested by De Bonet.

Column 8, lines 37-45 are provided below.

> For example, the invention can find use in automating
> search and retrieval aspects of a so-called "photo shop"
> where one image or a group of images that share a
> common semantic theme is retrieved from a generalized
> image database that stores a multitude of unrelated
> digitized images, and/or of a specialized image library,
> such as in retrieving a particular image or group thereof
> from a collection of highly related images, such as
> digitized medical X-ray or CAT scan images.

Highly related images are described as digitized medical X-ray or

CAT scan images. There is no discussion in this citation of derivative images

of a base image.

The Office Action acknowledges that De Bonet does not teach acquisition. The

Applicant admits that Walker teaches a method of acquiring, but does not see how the

combination of De Bonet and Walker teaches or suggests the ability to purchase one of a

selected group of derivative works of a base image without the use of hind sight and the

Applicant's disclosure as a roadmap. Accordingly, the Applicant believes a *prima facie* case

of obviousness has not been established by the Office Action.

The rejection of claim 2 relies on Column 8, lines 52-59 for the element of the

derivative images comprising a plurality of pre-modified variations of the selected base

digital image. Column 8, lines 52-59 are provided below:

> Then my invention, through a mathematical assessment of
> visual similarity using a substantial number of different
> pre-defined visual characteristics of the query images,
> taken collectively, against each image in an image
> database and using an inverse variance based measure,
> returns, as its results and without human intervention such
> as through, e.g., setting weights and the like, the image(s)
> in the database that is most similar to the query images.

As the Patent Office will see, there is nothing in this citation to relate to pre-modified variations of selected base image, and this citation merely relates to a mathematical assessment of visual similarity of images in a database to determine whether or not they respond to the query. Accordingly, it is only with hindsight and the use of the Applicant's disclosure that a rejection of claim 2 can be formulated since this element is not taught or suggested by De Bonet. Nevertheless, claim 2 has been amended to require the derivative images to be pre associated with the base digital image. This cannot happen with the search engine taught by De Bonet.

Claim 3 was rejected citing Column 8, lines 36-45 for the proposition that De Bonet teaches that the element of derivative energy is created prior to the user selection of the base digital image are stored in a storage database. Column 8, lines 36-45 are provided again below.

> The semantic content of the images sought or searched. For example, the invention can find use in automating search and retrieval aspects of a so-called "photo shop" where one image or a group of images that share a common semantic theme is retrieved from a generalized image database that stores a multitude of unrelated digitized images, and/or of a specialized image library, such as in retrieving a particular image or group thereof from a collection of highly related images, such as digitized medical X-ray or CAT scan images. To simplify and facilitate reader understanding,

The "highly related" images such as digitized medical X-ray or CAT scan images are not derivative images of a base image as would be understood in the art especially in reference to the amendment to claim 1. As provided herewith, this rejection is not a *prima facie* case of obviousness.

Claim 4 was rejected citing Column 5, lines 1-7 of <u>De Bonet</u> for the element of the derivative image further comprising the selected base digital image. Column 15, lines 1-7 is provided below.

> To refine the retrieval process, the user can also instruct
> the image retrieval and display manager to use any
> retrieved image as a additional query image in order to
> refine a subsequent retrieval operation for that query. In
> this case, the average and variance vectors will be updated
> to account for the signature for this new query image, and
> the entire retrieval process repeated.

There is nothing in this passage which teaches or suggests the ability to provide the base image as one of the selections of derivative images. Once again, it is through the use of hind sight and the Applicant's disclosure that such rejection can be formulated. This citation refers to the ability to utilize the base images as the query image from which other similar images are then displayed to the user. (i.e., it is a search engine for searching pictures using a picture as the query).

Claim 5 was rejected citing Column 11, lines 32-37 of <u>De Bonet</u>. The Applicant would agree that claim 5 stands or falls with claim 1.

Claim 6 was rejected based on the combination of <u>De Bonet</u> and <u>Walker</u> for the proposition that it would be obvious to combine <u>De Bonet</u> and <u>Walker</u> to create an apparatus of searching from pre-selected derivative images and then purchase them. The Applicant simply cannot make the leap in logic to make the combination as proposed by the Office Action to recreate this obviousness rejection. The Applicant believes a *prima facie* case of obviousness has not been met. Nevertheless, as amended by this amendment to claim 1, claim 6 is also believed to be allowable.

Claim 8 was rejected citing <u>De Bonet</u> for the proposition that Column 11, lines 28-32 somehow teaches outputting a plurality of derivative images corresponding to selected based digital images. Column 11, lines 28-32 are provided below.

> **210**, to system **220**. That system will then, in an inventive
> manner as discussed in considerable detail below, retrieve
> an image(s) from all those stored in the image database
> and which is the most similar to the query images, taken
> collectively, and display that image on display **250**.

As the Patent Office will see, there is no teaching or suggestion in this portion for the outputting of derivative images of a selected base digital image, only providing the results of a query. Claim 8 has been amended to require that the outputting of a plurality of a derivative image occur independent of conducting the query for said derivative images from a database. Accordingly, there is no way to modify <u>De Bonet</u> to perform claim 8 as now amended.

Claim 9 has also been rejected citing Column 22, line 60-Column 23, line 8 for the proposition that the derivative image be pre-created and stored in a storage device of the computer before selecting the base digital image. Claim 9 depends from amended claims and is allowable for reasons provided above. Furthermore, claim 9 has been amended to require that the derivative images be pre-associated with the base digital image. This is not believed to be taught or suggested by <u>De Bonet</u>. In fact, <u>De Bonet</u> cannot be modified to operate in this manner as it would deflect its purpose as a <u>search</u> engine.

Claim 10 has been rejected citing Column 15, lines 1-7 as <u>De Bonet</u> providing the particular element. This issue has been addressed in reference to the argument above for claim 4 and claim 10 is believed to be allowable on similar grounds.

Claim 12 was rejected citing Column 22, lines 5-8 of De Bonet. Just as for claim 6, the Applicant is confused by how a combination of Walker and De Bonet teach the claimed method without utilizing the Applicant's disclosure and claims as a roadmap for piecing together unrelated elements. Nevertheless, claim 12 stands or falls with claim 8 and is believed to be allowable as provided above.

Claim 13 was rejected in view of De Bonet. Claim 13 stands or falls with amended claim 8.

Claim 14 was rejected citing De Bonet. Claim 14 stands or falls with amended claim 8.

Claims 7 and 11 were rejected over De Bonet in view of Shaffer et al. The Applicant has reviewed both Figure 4 and Column 10, lines 1-17 and has been unable to find a reference to a selection of special effects tools. Nevertheless, Column 2, lines 5-15 appears to provide this teaching in Shaffer et al.
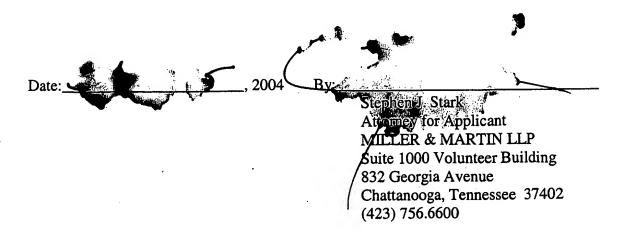
The problem with this rejection is that it utilizes the Applicant's disclosures as a roadmap to combine two unrelated references to improperly create a *prima facie* case of obviousness. Specifically, there is no teaching or suggestion to combine Shaffer et al. with De Bonet expect for the Applicant's disclosure which is improper. Nevertheless, claims 7 and 11 depend from allowable claims, namely, 1 and 8 and are allowable for the reasons provided above.

Conclusion

As argued above, claims 1-14 are now believed to be in proper form for allowance and such action is respectfully requested. The appropriate fee for Extension After the Third Month along with the appropriate fee and Petition for Revival of an Unintentionally

Abandoned Application are enclosed. If additional fees are due or over charges are determined, Deposit Account No. 13-3403 should be utilized for that purpose.

Respectfully submitted,

Date: _____, 2004   By: _____

Stephen J. Stark
Attorney for Applicant
MILLER & MARTIN LLP
Suite 1000 Volunteer Building
832 Georgia Avenue
Chattanooga, Tennessee 37402
(423) 756.6600

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

Mail Stop Amendment -- Fee
Commissioner for Patents
P. O. Box 1450
Alexandria, Virginia 22313-1450

on this 15th day of September 2004.

By: _Beverly L. Middleton_
　　　 Beverly L. Middleton